No. 89-1135

IN THE
Supreme Court Of The United States
OCTOBER TERM, 1989

ROSE M. WEBER, the ROSE M. WEBER TRUST, GERALYN WEBER HILGERT, LINDA WEBER STELLER, PATRICE WEBER MARCIANO and STEPHEN G. WEBER,

Petitioners,

v.

JOHN W. KLUGE, STUART SUBOTNICK, ROBERT M. BENNETT, GEORGE H. DUNCAN, THOMAS T. GOLDSMITH, JANE PICKENS HOVING, WARREN H. LASHER, JOHN P. LOMENZO, METROMEDIA COMPANY, successor to METROMEDIA, INC. and JWK ACQUISITION CORPORATION,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of New Jersey

BRIEF OF RESPONDENTS IN OPPOSITION

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STATEMENT OF THE CASE

Petitioners were members of the plaintiff class in a Delaware class action which was settled and dismissed, with prejudice, against them. They had notice of the settlement and made no objection to it. Years later, they brought this action in New Jersey on the dismissed claims, contending that they were not bound by the Delaware judgment.

None of the three New Jersey state courts to which this case was presented thought it worthy even of a published opinion. The New Jersey Superior Court dismissed petitioners' complaint from the bench; the New Jersey Appellate Division affirmed in a brief, unpublished memorandum; and the New Jersey Supreme Court denied leave to appeal. Every one of these courts correctly viewed the case as a simple application of well-settled principles of *res judicata*. Petitioners nevertheless suggest that the case deserves the attention of this Court.

REASONS FOR DENYING THE WRIT

The decisions of the New Jersey courts simply applied a well-established line of cases holding that class action settlements, made in circumstances identical to those present here, are binding on absent members of the class who had notice of the settlement. *See, e.g., In re Maxxam Group, Inc.*, Slip op., Civ. Action No. 8636 (Del. Ch. Ct. Apr. 16, 1987); *Schreiber* v. *Hadson Petroleum Corp.*, Slip op., Civ. Action No. 8513 (Del. Ch. Ct. Oct. 29, 1986). Petitioners cite no decision from any court anywhere that is in conflict with the holdings of these cases or with the decisions below. Their claim that the Supreme Court should choose this case as a vehicle for overturning these precedents -- and thus effectually vitiating countless class action settlements -- is, we respectfully submit, frivolous.

Petitioners' primary argument is that they should have been permitted the right to opt out of the 1984 Delaware class action. They rely solely upon this Court's decision in *Phillips Petroleum Co.* v. *Shutts*, 472 U.S. 797 (1985), but they fail even to address the circumstances that make *Phillips* inapplicable here.

First, the requirement of an opt-out provision in *Phillips* was specifically limited by this Court to class actions in which a money judgment is the primary relief sought. 472 U.S. at 811, n.3. In the Delaware class action, the class plaintiffs sought only

injunctive and equitable relief. Secondly, petitioners -- though they had notice of the Delaware class action settlement -- neither objected to it nor asked the Delaware court to let them opt out. They thus failed timely to assert the right that their reading of *Phillips* would give them. Finally, they ask that their expanded reading of *Phillips* be applied to invalidate a Delaware settlement finalized a year before *Phillips* was decided. Neither this Court nor any other court, so far as we know, has ever held the *Phillips* decision to be retroactive; to apply it retroactively in this case would be palpably unjust, and would jeopardize the finality of thousands of settlements previously approved by Delaware and other courts.

Petitioners' second proposed issue -- whether they have raised "new facts" entitling them to escape from the bar of *res judicata* -- may be dealt with even more summarily. The New Jersey state courts compared petitioners' complaint with the prior Delaware class action complaint, and found that the alleged "new facts" were not new at all. A scrutiny of the record will show that the New Jersey courts were right; but in any event, the issue is not one of such importance as to merit this Court's attention.